

FILED WITH THE BOARD OF  
RESPIRATORY CARE

ON April 2, 2000  
Thomas R. O'Neal

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF RESPIRATORY CARE

IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF:

Administrative Action

JOHN FLYNN  
LICENSE NO. ZA01271

FINAL ORDER  
OF DISCIPLINE

TO PRACTICE RESPIRATORY CARE IN  
THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Respiratory Care upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent holds license #ZA01271 to practice respiratory care in the State of New Jersey, and has been a licensee at all times relevant hereto.
2. Respondent voluntarily surrendered his license to practice nursing in the State of New Jersey on January 11, 1999 in lieu of a temporary suspension. (Copy of Consent Order annexed hereto and made a part hereof).
3. On or about July 31, 1999, a Final Order was filed with the New Jersey State Board of Nursing pursuant to which respondent's license to practice nursing in the State of New Jersey was suspended (Copy of Final Order annexed hereto and made a part

hereof). The Final Order contained findings, including that:

a. During the period in or about March to May 1998, Respondent, while employed as a licensed respiratory care practitioner at Cooper Medical Center misappropriated and/or failed to properly account for and/or dispose of 33cc's of Fentanyl (C-11) and 10 cc's of Versed (C-IV).

b. On or about November 24, 1998 Respondent, while employed as a respiratory therapist at Cooper Medical Center, was observed to be disoriented, unsteady, lethargic and unable to focus on his assignments and treatments.

c. On or about November 24, 1998 Respondent placed a black leather waist bag into his locker. Subsequently, a search of Respondent's locker disclosed the contents included Morphine Sulfate containing 3 cc's of fluid and Ativan containing 6 cc's of fluid.

4. Respondent's current address on file with the Board of Respiratory Care is 100 Beach Street, Atco, New Jersey 08004-3001. Attempts to contact respondent at that address have revealed that he no longer resides at that address.

#### CONCLUSIONS OF LAW

1. The suspension of respondent's license to practice nursing in New Jersey constitutes the suspension of license by another state agency for reasons consistent with our licensing statute in violation of N.J.S.A. 45:1-21(g) in that it is based on findings

that would give rise to discipline by the New Jersey Board of Respiratory Care.

2. Respondent's conduct, as evidenced by the finding of the Board of Nursing above constitutes a violation of N.J.S.A. 45:1-21(d),(e) and/or (i), repeated acts of negligence, professional misconduct and/or incapability of discharging the functions of a respiratory therapist in a manner that is consistent with the public's health, safety and welfare.

3. Respondent's conduct in misappropriating and/or failing to properly account for or dispose of the controlled substances Versed and Fentanyl constitutes professional misconduct violative of N.J.S.A. 45:1-21(e) and a repeated deviation from accepted standards of respiratory care practice in connection with the improper administration, storage and accountability of controlled substances which is in violation of N.J.S.A. 45:1-21(d)

4. Respondent's conduct when he was observed to be unable to discharge his responsibilities as a respiratory therapist constitutes an incapacity to function as a licensee in a manner that is consistent with the public's health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

5. Respondent's unauthorized possession of morphine sulfate and Ativan constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

6. Respondent's failure to notify the Board of a change of address constitutes a failure of the duty to cooperate in violation of N.J.A.C. 13:45C-1.3.

#### Discussion

The Board considered the matter at its regularly scheduled March 7th meeting. The Board determined that the State more than satisfied its obligation to provide adequate notice to respondent of the Provisional Order of Discipline based on the Certification of Mailing of James A. Cracolici, Assistant to the Executive Director. Said certification provides that on February 2, 2000 the Provisional Order of Discipline was filed with the Board relative to John Flynn. This Provisional Order allowed Mr. Flynn twenty (20) business days in which to submit a written request for modification or dismissal of the Findings of Fact contained in the Provisional Order. Also on February 2, 2000 a Provisional Order of Discipline was mailed to respondent by regular mail and by certified mail to an address provided by a prior employer, 4961 Princeton Avenue, Philadelphia, Pennsylvania. As of March 3, 2000, the envelopes were not returned to the Board nor was the signed return receipt card. A further mailing of the Provisional Order of Discipline was made on February 2, 2000 by regular and certified mail to respondent's address of record with the Board 160 Beach Drive, Atco, New Jersey. On February 14, 2000

the certified mail envelope was returned to the Board with the 4961 Princeton Avenue, Philadelphia, PA address written on the front with an arrow. The copy forwarded by regular mail has not been returned. Additionally, on March 3, 2000 the Deputy Attorney General forwarded to respondent at the same two addresses by Overnight and Regular mail letters informing him that on March 7th she was requesting entry of a Final Order of Discipline. The Board concludes that the State's obligation to provide notice to respondent was satisfied by mailings to his address of record with the Board. Indeed, in this instance the State provided notice to two separate addresses. The Board also considered that licensees have an affirmative duty to inform the Board of a change in address. Furthermore, a licensee may not evade process by not informing the Board of his current address.

Respondent did not answer the Provisional Order of Discipline nor did he submit a request for modification or dismissal. The Board finds no need for further proceedings and adopts in toto the Finding of Fact and Conclusions of Law of the Provisional Order of Discipline.

ACCORDINGLY, IT IS THEREFORE, ON THIS 7 DAY MARCH, 2000

ORDERED THAT:

Respondent's license to practice respiratory care in the State of New Jersey shall be hereby suspended, commencing on the date of filing of the Final Order in this matter; and it is further

**ORDERED THAT:**

On and after the date of filing of the Final Order, respondent shall not represent himself as a respiratory therapist, take any steps to renew his license nor engage in any service within the scope of respiratory care practice during the suspension period; and it is further

**ORDERED THAT:**

At the conclusion of the two years active suspension period commencing on the date of entry of this Final Order, respondent may apply for license reinstatement. Said application shall be in writing and shall be accompanied by a written report from a qualified mental health professional indicating his or her opinion concerning whether respondent is fit and competent to reenter respiratory care practice. The burden shall be on respondent to demonstrate to the Board's satisfaction that he has fully complied with the terms of this order, is fit and competent to reenter respiratory care practice. If the Board determines that respondent's license shall be restored, respondent shall agree to commence a probation period with such conditions and restrictions as may be determined by the Board at that time.

**STATE BOARD OF RESPIRATORY CARE**

By: \_\_\_\_\_

James Brophy, President